

DIST/OFFICE	DOCKET		FILING DATE			J	N/S	O	R	R 23	\$	DEMAND		JUDGE NUMBER	JURY DEM.	YR.	DOCKET NUMBER
	YR.	NUMBER	MO.	DAY	YEAR							OTHER	NUMBER				
1085/4	76-	0092	03	04	76	3	130	1				13		8510	P	76-	0092-C

PLAINTIFFS

DEFENDANTS

UNITED STATES OF AMERICA for the
use and benefit of DONALD J. HOWE,
d/b/a HOWE PRE-CAST COMPANY,

COOPER BROS., INC. and
KANSAS CITY FIRE AND MARINE
INSURANCE COMPANY,

CAUSE

40, U.S.C.A. §§ 270a and b. - breach of contract.

ATTORNEYS

Don E. Gasaway
1843 East 15th St.
Tulsa (932-4661) 74104

Paul McTighe, Jr.
Beacon Bldg.
Tulsa 74103
582-8850

Dan A. Rogers (Kan. City .)
117 East 5th St.
Tulsa 74103
583-5111

J. Dennis Ryan (Cooper Bros.)
Classen Terrace Bldg., Suite 112
1411 Classen
Okla. City 73106
405-528-2318

Ted Gibson (Cooper Bros.)
Fifth Floor, Mid-Continent Bldg.
Tulsa 74103 585-1181

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	4-1-76
				JS-6	1-1-77 (5-1-79)

DATE	NR.	PROCEEDINGS
3-4-76 3-16	1.	Complaint, filed, <u>with Demand for Jury</u> . Summons issued. rm Summons, ret. & filed: served Cooper Bros, Inc. by serving Registered Service Agt., Ok. City on 3-9-76. (USM \$5.20)g
3-17	2.	Affidavit of Service upon the deft. Kansas City Fire & Marine Insur. Co. by serving the OK Insurance Commissioner, R. Gerald Grimes, in OK City, OK. Return receipt is dated 3-9-76. v
3-23	3.	Appl. of def., K. C. Fire, for ext. of time to ans., filed. rm
3-23	4.	Order, filed, granting def., K. C., to 4/7/76 to ans.(JCS-Clk)rm
3-23	5.	Appl. of def., Cooper Bros., for ext. of time to ans., filed. rm
3-23	6.	Order, filed, granting def., Cooper Bros., to 4/7/76 to ans.(JCS-Clk)rm
4-7	7.	Separate answer of deft. Kansas City Fire and Marine Ins. Co., filed.k
4-12	8	Answer/of Cooper Bros. Inc., filed with leave of Court. g
4-14	9	Pltf. reply to def. counterclaim, filed. rm
4-27	10.	First interrogs. of pltf., filed. ph
5-13	MO:	Case set for PT on 8-5-76 at 1:15 p.m. (HDC-J)ph notices mld.
6-29	11.	Deft.'s answers to first interrogatories of Pltf., filed.k
7-20	12.	Appl. of Don E. Gasaway to withdraw as attorney of record for pltf., filed. ph
7-20	MO:	Ordered by the Court that this case is set for hearing on appl. of Don Gasaway to withdraw as atty for pltf. and for appl. of pltf. counsel to continue pre-trial, for Tuesday, August 3, 1976 at 3:00 p.m. (HDC-J)rm - notices mailed
8-3	MO:	Case called for hearing on applic. of Don Gasaway to withdraw as atty. for pltf. & to cont. PT hearing. Pltf. not present, but rep. by Fred Woodson. Defts. not present & not rep. Statements made. Pltf's applic. granted & Don Gasaway allowed to withdraw, subject to his firm being used for purposes of all pleadings & notices directed to the pltf. PT hearing set 8-5-76 is stricken & pltf. granted until 8-24-76 to obtain new counsel & make appearance. Pltf. counsel to prepare formal order & to make notification to pltf. (HDC-J)hm
8-4	13.	Order, filed, allowing Don E. Gasaway and the firm of Woodson and Gasaway, P.C. be allowed to withdraw as atty of record for pltf.; that this cause of action shall be stricken from PT docket of 8-5-76; that the pltf. is given until 8-24-76 to retain new counsel and appear by and through his new counsel.(HDC-J)ph cps mld
8-6	14.	Affidavit by Fred W. Woodson of mailing Order allowing withdrawal of counsel for pltf., filed. rm
8-24	15.	Affidavit of Don E. Gasaway re ltr withdrawing as atty to Mr. Donald J. Howe, filed. lm
8-27	MO:	Case set for show cause hearing on why case should not be dismissed w/o prejudice for failure to comply with order of Court entered 8-4-76, set for 9-24-76 at 10:00 a.m. (HDC-J)ph ltr mld
8-30	16.	Affidavit of Don E. Gasaway re withdrawal as atty of record, filed. ph
9-24	MO:	Case called for hearing on failure of pltf. to comply with order of Court entered 8-4-76. Pltf. not present nor rep.; deft. rep. The Court orders that proper notice having been given to pltf. & former pltf. counsel, & the pltf. having failed to comply w/order of Court, the pltf's complaint is dismissed without prejudice. Deft. moves for

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>76-C-92</u>
USA for use and benefit of Donald J. Howe, etc.		COOPER BROS, INC., et al	PAGE <u>3</u> OF <u>2</u> PAGES
DATE	NR.	PROCEEDINGS	
<u>1976</u>		judgment on its counterclaim, but since reply to counterclaim has been filed, case set for PT hearing 9-30-76 at 3:30 p.m. Mr. Gibson directed to prepare order of dismissal without prejudice. (HDC-J)hm	
9-27	17.	Affidavit of Don E. Gasaway, filed. ph	
9-30	MO:	Case called for Pre-trial hearing. Deft. rep.; pltf. not rep. Statements made. Order of dismissal of pltf's complaint w/o prejudice, signed & filed in open court. Deft. to prepare a PT order within 10 days & submit to Don Gasaway for service to pltf. Pltfs. given 10 days thereafter to object to PT order; any objections to be specific and counter PT proposals to be made within that time. Clerk to also give notice of directive to file PT order to pltf. & time of trial. Jury waived. Clerk to also advise pltf. of waiver of jury. Deft. to advise Court re request for atty. fees. Case set for N/J trial on 11-1-76 at 9:30 a.m. as to only issue remaining: deft's counterclaim against pltf. (HDC-J)hm	
9-30	18.	Order dismissing pltf's complaint without prejudice, filed and entered. (HDC-J)hm (copies mailed)	
10-12	19.	Affidavit of Don E. Gasaway, re service of non-jury docket on pltf., filed. rm	
10-22	20.	PT Order, filed, w/leave granted to file out of time. (HDC-J)ph cps mld	
10-27	21.	Affidavit of Don E. Gasaway, filed. ph	
11-1	MO:	Case called for non-jury trial. Deft. represented; pltf. not represented but present pro se. Pltf. granted permission to employ counsel and report to Court by 10:00 a.m., 11-2-76. Pltf's request for continuance denied and trial will commence following completion of trial in 75-C-523. (HDC-J)hm	
11-2	MO:	Case called for non-jury trial. Pltf. present & rep. by Paul McTighe; deft. rep. as before. Case continued for N/J trial until 11-3-76 at 9:30 a.m. (HDC-J)hm	
11-3	MO:	Case called for N/J trial. Parties represented. Case continued until 11-4-76 at 9:30 a.m. (HDC-J)hm	
11-4	MO:	Case called for N/J trial. Parties represented. Rule invoked. Court states only remaining issue is counterclaim of Cooper Bros. against pltf. Deft. presents case in chief on counterclaim w/test. of witnesses & introduction of exhibits, and rests. Pltf. presents case in chief w/test. of witnesses, introduction of exhibits & rests. Parties rest. Deft. moves for leave to amend pleadings to conform to the proof. Court makes findings and rules in favor of the deft. on its counterclaim and enters judgment for deft. in the amt. of \$3,662.80. Deft. to file brief on quest. of atty. fees within 8 days, w/statement of atty. fees attached. Pltf. given until 11-12 to file brief & both parties until 11-19 to respond, if desired. Deft. counsel to prepare journal entry of judgment. (HDC-J)hm	
11-4		Trial exhibits, filed. (Pltf's 1&2 in exhibit rm.; the rest w/file)hm	
11-12	22.	Pltf's brief in oppos. to defts' claim of atty fees as a measure of damages, filed. ph	
11-19	23.	Appl. of deft. Cooper Bros. for leave to file brief out of time, filed. ph <i>o as part of appl to 3 w/leave</i>	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>76-C-92-C</u> PAGE <u>4</u> OF <u>2</u> PAGES
USA for use and benefit of Donald J. Howe		Cooper Bros., et al	
DATE	NR.	PROCEEDINGS	
<u>1976</u>			
11-19	24.	Order, filed, granting leave for brief of deft. Cooper Bros., to be filed out of time. (HDC-J)ph cps mld	
11-19	25.	Brief of deft. Cooper Bros. in support of award of atty fees, filed, out of time. ph	
12-8	26.	Pltf's appl. for leave to file brief out of time, filed. ph <i>copy of final copy by hand</i>	
12-8	27.	Journal entry of judgment, filed and entered, that the deft. <i>Cooper Bros.</i> be awarded the sum of \$3,662.80 as damages for breach of contract, and costs; that Court retains jurisdiction for purpose of determining atty's fees. (HDC-J)hm (copies mailed)	
12-13	--	Order, filed, granting pltf. leave to file brief in oppos. to atty fees, out of time. (HDC-J)ph cps mld (Order is part of appl.)	
12-13	28.	Pltf's brief in opposition to award of atty fees as Court Costs, filed. ph	
12-29	29.	Deft's ans. brief to pltf's brief in oppos. to award atty fees, filed. ph	
<u>1977</u>			
1-4	30.	Pltf's supplemental brief in oppos. to award of atty fees. as Court Costs, filed. ph	
1-4	MO:	Case set for evid. hearing on award of atty's fees 3-3-77 at 11:00 a.m. (HDC-J)hm (notices mailed)	
1-7	31.	Pltf's motion to dismiss hearing set for 3-3-77, filed. ph	
1-7	32.	Pltf's brief in support of motion to dismiss hearing, filed. ph	
1-7	MO:	It is ordered by the Court that the defts. file a resp. brief within 10 days to the Plaintiff's Motion to Dismiss Hearing of 3-3-77. (HDC-J)ph cps mld	
1-7	32.	Notice of appeal by pltf. from judg. of 12/9/76, filed. rm (copies to USCA)	
1-7	33.	Bond for costs on appeal (\$250 surety), filed. rm	
1-18	34.	Motion and brief of deft. Cooper Bros. for dismissal of appeal, filed. ph	
1-18	35.	Deft's brief in oppos. of mo/dismiss hearing and suppl. brief in favor of award of atty fees as Court Costs, filed. ph	
1-21	36.	Appellant's designation of record on appeal, filed. rm	
1-25	MO:	Ordered by the Court that the word, "Plaintiffs", in the next to the last line in the Journal Entry of Judgment entered 12-9-76 should be amended by interlineation to read, "Defendant." (HDC-J)hm (letter written parties) <i>on page 3</i>	
2-9		Reporter's transcript of nonjury trial proceedings had on 11/4/76 filed. (T. Bloxom-CR)rm	
2-14	37.	Order, filed, striking hrg. on atty fees previously set for 3/3/77, pending appeal; further def. mo/dismiss appeal is overruled. (HDC-J)rm copies mailed	
2-14		Orig. appeal record (2 vols) transmitted to USCA. rm	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF USA for benefit of Donald Howe	DEFENDANT Cooper Bros	DOCKET NO. <u>76-C-92-C</u> PAGE ____ OF ____ PAGES
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DATE	NR.	PROCEEDINGS
<u>1978</u> 12-26	38.	Mandate and opinion of 10th Circuit, filed and spread of record, reversing insofar as \$1432.00 award for atty. fees, w/ direction to delete from judg.; thus, judg. as amended is affirmed, each party to bear own costs. rm
2-16-79	--	Appeal record (2 vols) received from 10th Circuit. rm
4-4	39	Amended Journal Entry of Judgment, filed & entered, that deft. Cooper Bros., Inc. be awarded the sum of \$2,230.80 from pltf Donald J. Howe, d/b/a Howe Pre-Cast Co. on Cooper's cross-complaint (ctr. clm), as damages for breach of contract, and costs of the action, all for which let execution issue. (HDC-J)k cps mld
5-14	40	ORDER that deft file formal applic/atty fees w/in 15 days; deft to attach itemized statement of time & expenses; pltf to file any objections w/in 10 days.(HDC-J)ra c/m
8-20	MO:	THE DEFT., having been ordered to file a formal applic/atty fees by 5-29, & having failed to file said applic., the matter of atty. fees is hereby overruled and moot. (HDC-J)hm (letter written parties)

6-5 Again to read by 6-6

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PLAINTIFF		DEFENDANT	DOCKET NO. _____ PAGE ____ OF ____ PAGES
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